IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 887 OF 2004

Shri Pandurang Mallarling Honmane
& ors. ... Appellants

V/s

Shri Maruti Mallarling Honmane ... Respondent

Shri P.R. Arjunwadkar for the appellants.

Shri S.M. Oak with Shri Ambar Joshi for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 14TH DEC., 2004.

P.C.:

1. This is an appeal preferred by the appellant defendants against the judgmentand order passed by the Addl. District Judge, Pandharpur dated 8.4.2003 dismissing their appeal and confirming the order of the Civil Judge, Jr. Divn., Mangalwedha, decreeing the plaintiffs' suit partly with declaration that the plaintiff was entitled for partition and separate possession of 1/3 share in the suit properties.

2. I have heard the learned counsel for both parties. Perused the record.

3. The suit was filed by the plaintiff for declaration that plaintiff was the owner and in possession of Gat No. 1160, 1487 and 2057 and the defendants had no any right in the said properties situated at village Kacharewadi, Tal. Mangalwedha, and in the alternative it was also prayed that if it is found that the said lands were not given to the plaintiff in partition, then he was entitled for partition of Gat No. 1477. It was also prayed that 1/3 share in the suit properties be granted alongwith the injunction.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff was successful in proving that land Gat No. 1477 was liable for partition and it was not established that other land was allotted to the plantiff in partition. Therefore, it was held that he was entitled to partition and possession of his 1/3 share in the entire landed property. As such the suit came to be decreed.

The appeal was carried to the District Court. The Addl. District Judge, Pandharpur adjudicated the appeal on merits and found that the lower Court had properly appreciated the evidence and as such it did not require

interference. The lower appellate Court held that appellants failed to prove that Bajarang has become owner of the land of Gat No. 1477 and also held that respondent No.2 did not prove that the oral partition was effected of other lands and consequently the appeal came to be dismissed. Hence the present appeal.

4. At the outset, it may be noted that the advocate for the appellant vehemently urged pertaining to the finding to the effect that appellant had failed to prove that Bajarang had become owner of the land of Gat No.1477. In this connection, on perusal of the entire evidence as well as judgments of both the Courts below, it is clear that merely because Malairsing made Vardi application to enter survey No.559 admeasuring 13 Acres 27 Gunthas in the name of his grandson Bajarang which would not amount transfer of property in question and that giving of Vardi application and certification of the mutation entry would not create any title in favour of Bajarang. On this basis, the findings appear to have been recorded properly, which in my considered view, would not brook any interference.

5. In view of these aspects and in view of the ratio laid down by the Supreme Court in the case of **Kondiba**

Dagadu Kadam v/s Savitribai Sopan Gujar & ors., reported in A.I.R. 1999 SC 2213, that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers conferred under Sec.100 of the C.P.C. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible in the present case. In relation to this aspect, both the Courts below are seen to have appreciated the entire evidence in proper perspective and, therefore, it would brook no interference even at this stage.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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